CENTER FOR MARINE CONSERVATION

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September 29, 2000

Greg Sanders
Southern Sea Otter Coordinator
U.S. Fish and Wildlife Service
Ventura Field Office
2493 Portola Road, Suite B
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Dear Mr. Sanders,

The Center for Marine Conservation (CMC) appreciates the opportunity to provide comments on the U.S. Fish and Wildlife Service (FWS) notice of intent (NOI) to prepare a Supplemental Environmental Impact Statement (SEIS) and resultant Scoping Meetings that were held on August 15th and 17th of this year. These comments supplement our testimony delivered on August 17, 2000, in Monterey, California before the U.S. Fish and Wildlife Service. CMC supports declaring the translocation a failure, eliminating the management zone, allowing the population at San Nicolas Island to remain, and allowing sea otters to naturally expand their range.

ESTABLISHING THAT THE TRANSLOCATION IS A FAILURE.

1. The Criteria.

The FWS completed a Draft Evaluation of the Southern Sea Otter Translocation Program, and proposed designating the translocation as a failure. CMC concurs with FWS' proposal. Further FWS completed a Biological Opinion (BO) under the Endangered Species Act (ESA), where it determined, and CMC concurs, that moving the animals out of the management zone will jeopardize the species, which would be contrary to the duty imposed on FWS under Section 7 of the ESA.

Under the current federal regulations, if, based on any one of the criteria listed below, the FWS concludes, after consultation with the California Department of Fish and Game (CDFG) and the Marine Mammal Commission (MMC), that the translocation has failed to produce a viable, contained experimental population, the FWS shall amend the federal regulations to terminate the experimental population, and otters remaining within the translocation zone will be captured and placed back into the range of the parent population. Efforts to maintain the management zone free of otters would then be curtailed after all reasonable efforts had been made to remove all otters that were still within the management zone at the time of the decision to terminate the experimental population. Reasonable efforts would include efforts up to the point that FWS and CDFG jointly determine that further efforts would be futile. However, given the jeopardy finding of the BO, CMC would oppose any effort to remove southern sea otters from the

management zone. Therefore, we urge FWS to move forward with the failure declaration and allow the otters to remain in the management zone.

2. Evaluation of Failure Criteria.

As stated in the Final Environmental Impact Statement accompanying the translocation program, and under FWS regulations at 50 CFR 17.84(d)(8), the translocation program could be considered a failure if one or more of the following conditions exist:

> 1) ***If, after the first year following initiation of translocation or any subsequent year, no translocated otters remain within the translocation zone, and the reasons for migration or mortality cannot be identified and/or remedied;***
> 2) ***If, within three years from the initial transplant, fewer than 25 otters remain, and the reasons for emigration or mortality cannot be identified and/or remedied;***

Since the beginning of the Translocation Program 6 to 19 otters have remained at San Nicolas Island; consequently, CMC believes that the translocation program should be considered a failure under Criteria 2. In addition, the translocation failed because the population did not grow at the expected rate of 5 to 15 %. As stated, the lack of growth of the colony has been primarily attributed to poor recruitment, due to mortality or emigration.

> 3) ***If, after two years following the completion of the transplant phase, the experimental population is declining at a significant rate, and the translocated otters are not showing signs of successful reproduction (i.e., no pupping is observed); however, termination of the project under this and the previous criterion may be delayed, if reproduction is occurring, and the degree of dispersal into the management zone is small enough that the effort to continue to remove otters from the management or no-otter zone would be acceptable to the Service and CDFG;***

Since 1990, the colony at San Nicolas Island has not declined but has remained stable, and up until the spring of 1998, the number of sea otters in the management zone was relatively small, consisting of two or three animals. Consequently, CMC believes that Criterion 3 may be fulfilled considering that the population at San Nicolas declined dramatically during the two years following the completion of the translocation and that there has been no successful growth or recruitment in the population.

> 4) ***If the Service determines, in consultation with the CDFG and the Marine Mammal Commission, that otters are dispersing from the translocation zone***

and becoming established within the management zone in sufficient numbers to demonstrate that containment cannot be successfully accomplished. This standard is not intended to apply to situations in which individuals or small numbers of otters are sighted within the management zone or temporarily manage to elude capture. Instead, it is meant to be applied when it becomes apparent that, over time (one year or more), otters are relocating from the translocation zone to the management zone in such numbers that: 1) an independent breeding colony is likely to become established within the management zone or 2) they could cause economic damage to fishery resources within the management zone. It is expected that the Service could make this determination within a year, provided that sufficient information is available;

CMC believes that Criterion 4 has not been met. Sea otters have not moved from the translocation zone and established breeding colonies in the management zone. Instead the sea otters are moving into the management zone from the parent range. Nevertheless, fishers do claim that these sea otters have damaged the fishery resources in the management zone.

5) ***If the health and well-being of the experimental population should become threatened to the point that the colony's continued survival is unlikely, despite the protections given to it by the Service, State, and applicable laws and regulations. An example would be if an overriding military action for national security was proposed that would threaten to devastate the colony and the removal of otters was determined to be the only viable way of preventing the loss of the colony.***

While no overriding action has been proposed that might threaten to devastate the colony, which to date has been stable, CMC would assert that the health and well-being of this population is in question given its small size, vulnerability to a oil spill, epizootic, or other catastrophic event, and apparent inability to reproduce.

It is clear that the translocation of sea otters to San Nicolas Island has not been successful. The FWS expected a mortality rate of three to five percent to result from handling southern sea otters during translocation and containment, the stress of being captured, and held in captivity. At the rate of an expected 5 % mortality, 7 of the 140 southern sea otters that were moved to San Nicolas Island would have been expected to die. In actuality, 12 southern sea otters died and it is possible that a large percentage of the 80 individuals of unknown fate died as a result of being captured and moved. The FWS does not possess any new information indicating that moving animals is likely to result in fewer mortalities or a reduced mortality rate

The colony at San Nicolas is insufficient to provide southern sea otters with protection from a large oil spill. Furthermore, sea otters from the parent population have moved into the management zone. The FWS and the Southern Sea Otter Recovery Team have long recognized that the expansion of the sea otter range and ultimate recovery of the species may best be accomplished through natural range expansion. Therefore, if sea otters are to expand their numbers and their range to survive a catastrophic oil spill, the FWS has found that: "an obvious impediment to range expansion is maintenance of the management zone and the requirement to capture and relocate sea otters above that zone."

In addition, the FWS has determined in the BO that moving the animals out of the management zone will jeopardize the species, which would be contrary to the duty imposed on FWS under Section 7 of the ESA. This conclusion was reached because:

- "Reversal of the southern sea otter's population decline is essential to its survival and recovery. Continuation of the containment program will result in the capture, transport, and release of large numbers of southern sea otters from the management zone into the parent population. These actions may result in direct deaths of individuals and disrupt social behavior in the parent population to the degree that those affected individuals will have reduced potential for survival and reproduction. These effects will exacerbate the recent decline of the southern sea otter population."

- "Expansion of the southern sea otter's distribution is essential to its survival and recovery. Continuation of the containment program will result in the exclusion of southern sea otters from the area south of Point Conception. This effect will perpetuate the species' artificially restricted range and its vulnerability to the adverse effects of oil spills, disease, and stochastic events."

CMC concurs with these findings and urges the FWS to move expeditiously to declare the translocation a failure and dissolve the management zone so as to allow southern sea otters to naturally expand throughout their historic range.

In conclusion, CMC recognizes that the decision by FWS to declare the translocation a failure will have ecological effects for southern sea otters and their habitat, economic effects on commercial shellfish fisheries, and political effects on future management requirements. On the other hand, the jeopardy finding is sound as currently no new methods of non-lethal take are available to prevent possible death as a result of the translocation. Furthermore, as FWS has noted, if animals from the south were moved back into the central portion of the range, the seasonal separation of males and females would be disturbed. Various disruptions of the social system could occur; including increased aggressive behavior, increased use of food resources, and changes in hormonal

levels. Disturbance of birthing and the raising and weaning of pups, and the synergistic effects of these disruptions may result from an unnatural influx of male sea otters. Given the declining population of southern sea otters, CMC concurs with the BO and believes that moving any animals out of the management zone would likely result in mortality that would further impede the recovery of this species. Moreover, since FWS has an obligation under the ESA to promote the recovery of threatened and endangered species, removal of sea otters from the management zone is contrary to that duty. Historical recovery of the sea otter occurred primarily through range expansion initiated by the peripheral group of males. Preventing further range expansion will limit the natural growth rate of the mainland population; whereas, access to historical habitat may halt the population decline, prevent nonspecific resource competition, and decrease the potential for disease by providing more space. **Therefore, CMC supports declaring the translocation a failure, eliminating the management zone, allowing the population at San Nicolas Island to remain, and allowing sea otters to naturally expand their range to allow for the recovery of the species under the ESA and to achieve its Optimum Sustainable Population under the Marine Mammal Protection Act (MMPA). Furthermore, CMC urges FWS to use interim final rule or expedited rulemaking to suspend requirements for capture and removal until decision-making is completed.**

ISSUES FOR THE SUPPLEMENTAL EIS TO TAKE INTO ACCOUNT

The Supplement EIS must give full weight to the goals and objective of both the ESA and the MMPA and develop alternatives that meet these goals and are precautionary for the species. The Supplemental EIS should clearly identify the very significant risks to the southern sea otter population that will result from any continued attempt to perpetuate an artificially restricted range for California's sea otter population. These risks include vulnerability to the adverse effects of oil spills and infectious disease. It is now clear both that translocation of otters cannot occur without unacceptably high levels of otter mortality and that such mortality will further exacerbate the current population decline. FWS must also consider that the expansion of the southern sea otter's distribution is essential to its survival and recovery and that such expansion may be due, in part, to limited resources and increased competition for those resources which has resulted in a portion of the population searching for new suitable habitats.

To the extent that the supplemental EIS analyzes socio-economic impacts associated with otter management and specifically the potential economic impact of otters on shellfisheries in any expanded range, the document should also consider the tremendous economic benefit that such areas may realize from growing otter populations. Certainly everyone in the Monterey Bay area is well aware of the huge tourism draw created by one of the most photogenic marine mammal species. Although perhaps difficult to document, the socioeconomic benefits of otter expansion are likely to be significant and should be included in the supplemental EIS.

Finally, CMC recommends FWS **discount** the potential economic impacts of otter movement on shellfisheries based on (1) the ongoing decline in the fisheries without otters and (2) the delay between any policy decision and otter presence in specific areas of an expanded range. The main point is that socio-economic impacts should not be calculated based on this year's shellfish value. It will take otters some time to move into and establish themselves in the southern areas of their historic range - maybe decades. By that time the fisheries may have declined to such a degree, due to overfishing, that they may no longer be economically viable. To provide an accurate assessment of potential socio-economic impacts, the SEIS should take into account likely future declines in shellfishery returns independent of otter expansion and the time lag in otter expansion.

Finally, FWS should take into consideration that otters are a well-documented keystone species, and healthy sea otter populations have been shown to have beneficial effects on kelp ecosystems and thus the creatures that are associated with kelp (including juvenile rockfish). Sea otters may change the structure and complexity of their ecological community and in doing so increase the ecosystem's productivity and diversity. Sea otters eat numerous species of invertebrates and in some areas, fishes. The sea otter's diet can consist of several main prey types and becomes more diverse as the population increases and competition among sea otters for prey increases. Therefore, the re-establishment of otters into their historic range may have a positive impact on some commercial fisheries. As southern sea otters re-occupy their historic range, they will likely decrease the invertebrate population and cause the vegetational biomass to increase; consequently as sea otters become abundant in a community, fish production is enhanced and fish, in some instances, may assume an increasingly important role in the sea otter diet. This complex interaction probably decreases the intensity of sea otter predation on sea urchins, and favors coexistence and promotes an ecological balance. Thus, the re-introduction of sea otters helps in the restoration of a naturally functioning ecosystem, with a byproduct being the positive impact on some commercial fisheries. The SEIS should identify the potential benefit of sea otter expansion on commercial fisheries.

In conclusion, although sea otters may significantly affect shellfish populations, the loss of fisheries may also be attributed to human causes, including overfishing and pollution, as well as problems associated indirectly with human impacts on the marine environment, including variable recruitment and disease. With present management practices and decreasing resource abundance, finding management and conservation measures to allow sea otters and shellfish fisheries to sustainably coexist will be an immense challenge. However, CMC believes that healthy sea otter populations are integral to healthy marine ecosystems. Accordingly, changes in management of commercial fishing must precede any measures to control sea otter populations; at least until sea otter populations have recovered to sustainable levels.

CONCLUSION

CMC supports declaring the translocation a failure, eliminating the management zone, allowing the population at San Nicolas Island to remain, and allowing sea otters to naturally expand their range. CMC strongly believes that this option should be discussed fully in the supplemental EIS and identified as the environmentally preferred alternative.

Sincerely,

Nina M. Young

Nina M. Young
Director Marine Wildlife Conservation